

REMARKS

Upon entry of the present amendment the Claims under consideration are Claims 1-2, 4-19 and 21-25. Claims 3 and 20 have been cancelled with their subject matter being moved into independent claims 1 and 9, respectively. No new matter is added hereby. The Detailed Action of 11 September 2003 will now be addressed with reference to any paragraph numbers or subject matter headings contained therein.

Claim Objections

Claims 5 and 16 have been amended per the Examiner's suggestion to obviate the objections.

Claims Rejections 35 USC § 102

Per paragraph 3 of the Detailed Action, Claims 1, 3 and 4 stand rejected as anticipated by McCormack, US Patent 5,855,999 (hereinafter "McCormack").

Claim 1 has been amended hereby to specifically recite a containment flap in an absorbent article made from a breathable liquid impervious laminate of thermoplastic film and nonwoven facing materials. McCormack shows a breathable, liquid impermeable laminate useful for forming all or a portion of absorbent articles. It is not believed that McCormack teaches or suggests that its laminate be used as a containment flap within an absorbent article as required by the present invention, even though the claims of McCormack are not limited in this regard. Claim 1 as amended is therefore not now anticipated by McCormack.

The subject matter of cancelled Claim 3 has been incorporated into the body of Claim 1. Claim 4 is dependent from and incorporates the limitations of independent Claim 1. Therefore, the presently amended Claims are not anticipated by McCormack. Applicants therefore respectfully request that the present rejections be withdrawn.

Per paragraph 4 of the Detailed Action, Claims 1, 6, 9, 10, 15, 16 and 25 stand rejected as anticipated by Buell (US Patent 5,085,654 hereinafter "Buell"). Each of Claims 1 and 9 have been amended hereby to be limited to a material used as a containment flap in an absorbent article made from a breathable liquid impervious material including a nonwoven layer. No corresponding teaching of such a containment flap is shown in Buell. All remaining Claims under discussion are dependent from and incorporate the limitations of independent Claims 1 and 9. Therefore, the presently amended Claims are not anticipated by Buell. Applicants therefore respectfully request that the present rejections be withdrawn.

Claims Rejections 35 USC § 103

Per paragraph 5 of the Detailed Action, Claims 2, 7 and 8 are rejected as obvious over McCormack.

Claim 2, as dependent from Claim 1, and incorporating all limitations thereof, cannot be considered obvious in view of McCormack since, per the above discussion, McCormack gives no teaching or suggestion of its laminate being used as a

containment flap within an absorbent article as required by the present invention, and especially with regard to the recited vapor transmission rate of Claim 2.

Claims 7 and 8 specify that the material of the present invention has a Young's modulus of up to about 14 psi/% in the first axis and a Young's modulus greater than the first axis and of up to about 212 psi/% in the second axis, and thus has a preferential direction of extensibility. As admitted in the Detailed Action, with respect to the claims 7 and 8 claiming specific Young's moduli, no corresponding teaching of such a preferential direction of extensibility is shown in McCormack. The Detailed Action then asserts that because McCormack teaches the use of similar materials, the burden is shifted to Applicants to prove that McCormack is not inherently (or obviously) teaching the claimed material.

The Detailed Action asserts that McCormack teaches a "breathable necked bonded laminate" at col. 3, line 55-col. 4, line 59 and col. 5, line 55-col. 6, line 31. Applicants have closely reviewed the cited passages and find no reference to a necked laminate material nor any reference to the use of such necked bonded laminate material to provide a preferential direction of elasticity in a laminate. McCormack at col. 10, lines 2-8 teaches that one of its layers may be expanded under roller tension and bonded to the other layer to cause undulations. However this passage does not suggest any control of preferential extendibility nor the use its material as a containment flap.

It is further noted that McCormack focuses on filled, predominately linear, polyolefin films with a fibrous polyolefin nonwoven web comfort layer (col. 5, lines 56-

67) while the present invention gives other material examples, such as polyether block amide elastomeric films (see page 26 of the specification).

Further, while Applicants cited McCormack as an example of breathable film types generally suitable for use the present invention, it is respectfully noted that Applicants clearly teach that any breathable films used in the context of the present invention must be transversely extensible (page 24, line 6) and that it would be understood by the person having ordinary skill in the art that such materials may have to be modified to meet the criteria of the present invention (page 25, line 8). Clearly, because McCormack contains no discussion or suggestion at all of preferential extensibility it cannot *prima facie* suggest to the person having ordinary skill in the art the invention as presently claimed. Therefore, no further proof need be offered. Any suggestion that McCormack makes the presently claimed invention obvious merely through the use of similar starting materials at some generic level would require an impermissible *post hoc* rationalization made with the present invention firmly in mind.

Applicants therefore respectfully request that the present rejections be withdrawn.

Per paragraph 6 of the Detailed Action, Claim 5 is rejected as obvious over McCormack in view of Morman, US Patent 5,226,992 (hereinafter "Morman"). It is apparently the contention of the Detailed Action that the two references are properly combined to make the present invention obvious because supplying McCormack with the claimed percentage of necking requires only routine skill in the art and because Morman

teaches that the necked percentage (45%) is desired. The proffered motivation presupposes that McCormack wishes to attain preferential extensibility as taught by the present invention. However, as discussed above, McCormack is unconcerned with preferential extensibility. Morman is unconcerned with breathable liquid barrier materials and does not disclose use of a breathable polyether block amide film. Therefore, only with the benefit of hindsight and using the present Claims as a template, could the cited references be combined to achieve the present invention.

Applicants therefore respectfully request that the present rejections be withdrawn.

Per paragraph 7 of the Detailed Action, Claims 9, 11-13 and 17-24 are rejected as obvious over McCormack in view of Sauer (US Patent 5,938,652, hereinafter "Sauer"). Sauer teaches a rear waist flap with elasticized ends and a substantially inelastic center area. Applicants respectfully submit that Sauer contains no teachings regarding the containment flaps as per the present Claim 9, upon which the remaining Claims depend. Sauer instead appears to teach zones of elasticity and inelasticity along one axis of its waist panel material. Applicants reiterate their comments with respect to the lack of concern for differential extensibility by McCormack. Applicants therefore respectfully request that the present rejections be withdrawn.

For all the foregoing reasons, the Claims as presently amended are believed to be allowable over the art of record. A notice to that effect is earnestly solicited.

The Examiner is invited to call Applicant's undersigned attorney should the Examiner feel that any issues remain after entry of the present amendment.

Applicants herewith request a one month extension of time from the shortened statutory period for response to the Office Action. Enclosed please find a check for \$110.00 to cover the fee for a one month extension of time for response to the Office Action.

Favorable consideration is requested.

Respectfully submitted,



Roland W. Norris
Registration No. 32,799

Pauley Petersen & Erickson
2800 West Higgins Road; Suite 365
Hoffman Estates, Illinois 60195
TEL (847) 490-1400
FAX (847) 490-1403